

# LEVINE SULLIVAN KOCH & SCHULZ, L.L.P.

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May 26, 2006

General Counsel  
Federal Election Commission  
999 E Street, NW  
Washington, DC 20463

Re: MUR 5738

Dear Sir or Madam:

We represent the *San Antonio Express-News* and its corporate parent, the Hearst Corporation. (A statement of designation of counsel is enclosed.) We write in response to your letter dated May 8, 2006 enclosing a complaint with the Commission filed by Mr. Michael Idrogo. Based on the information Mr. Idrogo provided in his complaint, it does not appear that any action against the *San Antonio Express-News* by the Commission is warranted or authorized.

Mr. Idrogo complains of an advertisement that he alleges appeared in the April 8, 2006 edition of the *San Antonio Express-News*. The Federal Election Campaign Act of 1971, as amended (the "Act") imposes obligations on candidate committees, party committees and PACs with regard to campaign contributions and expenditures. See 2 U.S.C. §§ 431 *et seq.* The Act requires such entities to make certain disclosures in connection with "public communications," including advertisements placed in newspapers. See, e.g., *id.* §§ 431(22), 434; 11 C.F.R. § 110.11. The Act does not, however, impose any obligation on newspapers *accepting* those advertisements to investigate whether a particular advertiser is in compliance with the Act. Indeed, the only obligation the Act appears to impose on a newspaper is the obligation to charge similar rates for advertising in connection with a candidate's campaign that they charge for advertising space used for other purposes, see 2 U.S.C. § 441d(b), and there is no allegation in Mr. Idrogo's complaint that the *San Antonio Express-News* violated this provision in any manner.

Accordingly, the Act imposes no duty on the *San Antonio Express-News* that Mr. Idrogo alleges to have been violated, and the Commission does not appear to have subject matter jurisdiction over the *San Antonio Express-News* in any event. Cf. *Fed. Election Comm'n v. Phillips Publ'g, Inc.*, 517 F. Supp. 1308, 1312-14 (D.D.C. 1981) (holding that, under the media

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General Counsel

May 26, 2006

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exemption to the Act, FEC lacked subject matter jurisdiction to enforce order against press entity engaged in ordinary press functions).

Please do not hesitate to contact me if you have any questions regarding the foregoing or seek further information in connection with this matter.

Sincerely,

LEVINE SULLIVAN KOCH & SCHULZ, L.L.P.

By Ashley I. Kissinger /s/  
Ashley I. Kissinger

AIK/pks

cc: Jonathan Donnellan, Esq.  
Hearst Corporation

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